IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 4 of 1999

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDRAM RAMESHWARPRASAD - Appellant(s)
Versus
STATE OF GUJART & 1 - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MS SADHANA SAGAR for Appellant(s) : 1,
MR KP RAVAL, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 The present appeal is directed against the judgement and order of conviction and sentence passed by learned Additional Sessions Judge, Surat, dated 24th November 1996 in Sessions Case No.22 of 1997, whereby the learned Judge has convicted the appellant-accused for the offence under section 302 of IPC and ordered to undergo imprisonment for life and fine of Rs.1000/-, in default, to suffer further simple imprisonment for six months.

2.0 Originally Mrs R.V. Acharya was appearing on behalf of the appellant. However, she had retired from the matter and therefore Legal Aid Authority has appointed Mrs. Sadhana Sagar as counsel for the appellant and she

has appeared and argued the matter.

3.0 The case of the prosecution, in short, is as under:

3.1 The complainant Shardakunvar was staying in the house of one Lilaben at Opposite Water Tank Udhna-Magdalla Road. On 1.12.1996 Kishori Dolat Boudh (hereinafter referred to as Kishori) and Govindbhai came to their place. Along with Sharadakunvar one Sarika and Mummy were staying. On 12.12.1998 Shardakunvar and others had gone out and on the way they stopped for tea at a hotel. At that time one boy came running there and told that the guest staying in her room has been burned. Therefore all the persons rushed there. They saw that Kishori was burning. Shardakunvar asked as to who has done this. In reply she stated that Govindbhai has poured kerosene over Kishore and set ablaze by saying that Kishori had some illicit relation with someone. After setting Kishore on fire Govindbhai had run away. All the persons had taken the injured to hospital and lodged the complaint with Umra Police Station. P.S.I. Shri R.L. Mavani had noted down the complaint. Thereafter he has

taken over the investigation. A Yadi was prepared for Executive Magistrate. Accordingly the Executive Magistrate recorded the dying declaration. Police Officer Shri Mavani prepared the panchnama of the place of incident. Thereafter Kishori Doilat succumbed to the injuries. Inquest Panchnama was prepared and dead body was sent for post mortem report. The Inquiry Officer recorded statements of the witnesses. In pursuance of the complaint the appellant was arrested. Panchnama of the appellant was also prepared. The muddamal articles were also sent for FSL report.

3.2 The case was registered as Criminal Case No.126/97 in the Court of Judicial Magistrate First Class. After the investigation the chargesheet came to be filed in the court of learned Judicial Magisrate, First Class, Surat. Since the case was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class, Surat, committed the case of Court of Sessions, Surat under section 209 of the Criminal Procedure Code. The case was numbered as Sessions Case No.22 of 1997.

4.0 In order to prove the case against the appellant the prosecution has examined in all 19 witnesses and placed on record 16 documents. On submission of closing purshis by the prosecution, learned Additional Sessions Judge, Nadiad, recorded further statement of the appellant-accused under section 313 of CrPC. Thereafter, after hearing the learned Advocates for the respective parties, learned Additional Sessions Judge, Surat delivered the aforesaid judgement and order of conviction and sentence, against which the present appeal has been filed.

5.0 Mrs Sadhana Sagar, learned Advocate appearing for the appellant, submitted that the prosecution has not established the case against the appellant. She submitted that the presence of the appellant accused at the scene of offence is also not established. According to her, the dying declarations which are recorded are not trustworthy. She therefore submitted that the appeal deserves to be allowed.

6.0 Mr.K.P. Raval, learned APP, appearing for the State has supported the judgement. He submitted that there

are as many as three dying declarations i.e. one before the Executive Magistrate, the case diary before the police and the statement made one of the friends and therefore, it cannot be said that no reliance can be placed upon those dying declarations. He further submitted that the presence of the appellant has also been established by independent evidence and submitted that the appeal deserves to be dismissed.

7.0 We have heard the learned Advocates for the respective parties and gone through the judgment and order of conviction and sentence and all other relevant record pertaining to the present case.

8.0 Dr. Kiran Ratilal Pensuriya (PW1) was examined at Exh.9. According to the postmortem report the cause of death is shock due to burns. According to the report the burn injury was approximately 95%. Dr. Kiran has supported the postmortem report.

9.0 Rasikbhai Maganbhai Patel (PW2) was examined at Exh.11. He was serving as Mamlatdar and Executive Magistrate at the relevant time. According to him, as per

Yadi, he had gone to Civil Hospital for taking the dying declaration. He stated that he has taken the dying declaration of Kishori and at that time she was in good mental condition. In the statement Kishori has clearly stated that Govind (the appellant-accused) had poured kerosene and set her ablaze. Learned Advocate for the appellant is not able to controvert the statement of this witness. Therefore this dying declaration is trustworthy.

10.0 Meenaben Pravinbhai Rathod (PW3) was examined at Exh.19. She is the neighbour of Shardakunvar. According to her deposition, she knew the appellant and she has clearly stated that the appellant has set Kishori on fire. She has identified the appellant in the court. She stated that when she went to the place of incident on hearing shouts, she heard Kishori telling that Govind has set her fire. Learned Advocate appearing for the appellant is not able to state on record that this statement is not trustworthy. This witness is known to the appellant and she heard Kishori telling that Govind has set her fire. Therefore there is no reason to disbelieve the evidence of this witness.

11.0 One Savitaben (PW7) who was examined at Exh.22 also stated that she has seen the incident and she knew Govindbhai. She has supported the version of Meenaben (PW3).

12. Jaydev Baudh (PW11-Exh.34) was examined by the prosecution. He had stated that Govind had gone to his house along with Kishori and had stayed there for two days. This witness has identified Govind in Court. The statement of this witness has also clearly supported the version of the prosecution.

13.0 Nankakhan Ismail (PW14) has been examined at Exh.41. He has also stated that he received the information about the incident in question. He has confirmed that he had received information about the incident and that Govind had poured kerosene over Kishori and set her ablaze.

14.0 We have considered the evidence on record. The dying declaration before the Executive Magistrate clearly established the case against the appellant-accused. The evidence of Meenaben is also in the form of dying

declaration wherein Kishori had told Meenaben that the appellant-accused had poured kerosene and set her ablaze. This is also supported the evidence of Nankakhan (PW14-Exh.41) who has recorded the first information. Looking to the above dying declarations we are of the opinion that they are trustworthy and the learned Advocate for the appellant-accused is not able to point out anything from the record to show that they cannot be relied upon for basing the conviction. The postmortem report clearly shows that there is 95% burn injury and the cause of death is due to burns. Evidence of all the witnesses is consistent and we have no hesitation in accepting their evidence. From the evidence the presence of the appellant-accused is also established and the witness viz. Savitaben has identified the accused. Looking to the overall facts and circumstances of the case it is established that it is a homicidal death.

15.0 The law on the subject is well settled. In a recent decision of the Hon'ble Apex Court in the case of ***Smt. Shakuntala v/s. State of Haryana*** reported in ***2007(5) Supreme Today 668***, the Apex Court has

narrated the principle on which dying declaration can be admitted in evidence. It has been held therein that dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. However, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. In the case on hand, we find the Dying Declarations to be wholly trustworthy and free from all doubts and are of the opinion that conviction can be based on it, without any corroboration.

16.0 So far as the aspect of homicidal death is concerned, the same was not disputed before the Court below and has not been disputed even before this Court. In that view of the matter, we are not discussing the same in detail and, accordingly, have no hesitation in holding that the deceased died a homicidal death.

17.0 On an evaluation of the entire evidence appearing on record, we are of the opinion that the prosecution was able to prove the case against the appellant-accused. We are, therefore, in complete agreement with the judgment

and order of conviction and sentence passed by the Additional Sessions Judge, Surat, which does not call for any interference. In the result, the appeal deserves to be dismissed and is accordingly dismissed.

[R.P. DHOLAKIA, J.]

[K.S. JHAVERI, J.]

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